HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 322 of 2004(M/S)

Jiwan Singh

Versus.

Champa Devi & another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 1o.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 322 of 2004 (MS)

Jiwan Singh .... Petitioner

Versus

Champa Devi & another ..... Respondents

Date: 10.8.2004

Sri Pankaj Purohit, Advocate for the petitioner
Standing Counsel for the respondents.

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dted 1.4.2004 passed by the respondent no.2.

Brief facts giving rise to the present writ petition are that respondent no.1 filed an application under section 21 (1)(a) of U.P. Act No. XIII of 1972 claiming herself as landlord of the accommodation in dispute. The petitioner contested the release application by filing written statement, stating therein that he is not the tenant or respondent no.1. After the death of his grand father Sri Rajendra Singh is in the tenancy of the said property and is running a shop there. After filing of written statement,

application was fled for impleading Sher Singh as necessary party. The petitioner submitted his objection stating therein that under the provisions of U.P. Act No. XIII of 1972, there is no provision for impleadment. Said application was allowed and the order of the Prescribed Authority has been challenged in the present writ petition.

The prescribed authority allowed the application o n the ground that Rajendra Singh is running the shop himself. In paragraph 6 of the written statement the petitioner has admitted that Rajendra Singh is a tenant in the premises in dispute. In view of the aforesaid facts, Rajendra Singh has been impleaded as a party.

The counsel for the petitioner has referred the judgment in ARC 1990, page 201, Uma Shankar Pathak vs. Addl. District Judge, Kanpur, where it hs been mentioned that the power to implead a party did not vest either in the District Magistrate, Rent Control and Eviction Officer or the Prescribed Authority. The said decision is not applicable to the facts of the present case as in the present case Rajendra Singh has been impleaded as a party at the instance of the petitioner himself as he stated in paragraph 6 of his written statement that Rajendra Singh is the original tenant. Further rule 22 of the U.P. Act No. XIII of 1972 provides power under the Code of Civil Procedure, where under clause (f). It has been mentioned that the powers referred under section 151 and 152 C.P.C. to make any order for the ends of justice has been provided.

Apex court in the case Ishwar Bhai C. Patel vs. Harihar Begera, ARC 1999 (1) SC 670, has interpreted Order 1 Rule 3 C.P.C. which provides as to who may be joined as defendant in a suit. The Apex court has observed that the person against whom

relief is claimed be joined as defendant. The Apex Court has held as under:

10. This can be viewed from another angle.

Order 1, Rule 3 provides as under:

R.3 Who may be joined as defendants.

All persons may be joined in one suit as defendants were

(a) any right to relief in respect of, or arising out of, the same act or transadtion of series of acts or transactions is alleged to exist against such persons, whether jointely, severally or in the alternative, and

(b) if separate suits were brought against such persons, any common question of law or fact would arise."

11. This Rule requires all persons to be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same act or transaction or series of acts or transitions against those persons whether jointly severally or in the alternative. The additional factor is that if separate suits were brought against such persons, common questions of law or fact would arise. The purpose of the Rule is to avoid multiplicity of suits.

12. This Rule to some extent also deals with the joinder of causes of action inasmuch as when the plaintiff frames his suit, he impleads persons as defendants against whom he claims to have a cause of action. Joinder of causes of action has been provided for in Order II rule 3 which provides as under:

R.3. Joinder of causes of action (1) Save as otherwise provided a plaintiff may unite in the same suit

several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such cause of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of institution the suit.

13. These two provisions, namely order 1 Rule 3 and Order II Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined."

The Apex Court in the case Savitri Devi vs. District Judge, Gorakhpur and others, 1999 (2) A.W.,C 1249 (SC) has further held as under:

"9. Order 1 Rule 10 C.P.C. enables the court to add any person as party at any state of the proceedings if the person whose presence before the Court is necessary in order to enable the court of effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. In Khmechand Shankar Choudhari and another vs. Vishnu Hari Patil and others (1983)SCC 18, this Court held that a transferee pendent elite of an interest in an immovable which is the

subject matter of suit is a representative in interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. The Court has taken note of the provisions of section 52 of the Transfer of Property Act as well as the provisions of Rule 10 of Order XXII C.P.C. The Court said:

".....It may be that if he does not apply to be impleaded he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard he has got to be so impleaded and heard.....

11. In Ramesh Harachand Kundanmal vs. Municipal Corporation of Greater Bombay and others, JT 1992 (2) SC 116, this Court discussed the matter at length and held that though the plaintiff is a dominus litis and not bound to sue every possible adverse claimant in the same suit, the court may at any stage of the suit, direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case.

In view of the aforesaid facts, ther3 is no impediment before the prescribed authority to impaled Rajendra Singh as a party to the proceedings. In view of aforesaid I find no merit in the writ petition. However, question with regard to the fact as to who is the tenant shall be decided in the proceedings before the Prescribed Authority while hearing the release application.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

10.8.2004
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